

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiffs,

vs.

EMMANUEL CHAPLAIN,

Defendant.

8:14CR409

MEMORANDUM AND ORDER

This matter is before the Court on the “Petitioner’s Motion to Stricken [sic] Court’s Erroneous Memorandum and Order from the Judicial Record Due to Judicial Error,” filed by Defendant Emmanuel Chaplain at ECF No. 452.

The Defendant contends that the Court erroneously construed his “2241 Motion From Appellant,” ECF No. 448, as a motion under 28 U.S.C. § 2255 and the First Step Act, Pub. L. No. 115-391, 132 Stat. 5194 (2018), without providing him with adequate warning pursuant to *Castro v. United States*, 540 U.S. 375 (2003). He seeks leave to withdraw his Motion, ECF No. 448, and asks the Court to strike its Memorandum and Order, ECF No. 450, and Judgment, ECF No. 451, so he can pursue an action in the Middle District of California pursuant to 28 U.S.C. §2241.

In *Castro*, the Supreme Court held that a “limitation applies when a court recharacterizes a pro se litigant’s motion as a first § 2255 motion.” 540 U.S. at 383. “In such circumstances, the district court must notify the pro se litigant that it intends to recharacterize the pleading, warn the litigant that this recharacterization means that any subsequent § 2255 motion will be subject to the restricts on ‘second or successive’

motions, and provide the litigant an opportunity to withdraw the motion or to amend it so that it contains all the § 2255 claims he believes he has.” *Id.*

This Court did not recharacterize the Defendant’s Motion as a *first* § 2255 motion. It was construed as a second or successive § 2255 motion and as a motion for relief under the First Step Act. The Defendant has not shown that the Court’s Memorandum and Order, ECF No. 450, and Judgment, ECF No. 451, have prejudiced his rights to pursue any actions he wishes to pursue in the Middle District of California.

Accordingly,

IT IS ORDERED:

1. Defendant Emmanuel Chaplain’s “Petitioner’s Motion to Stricken [sic] Court’s Erroneous Memorandum and Order from the Judicial Record Due to Judicial Error,” ECF No. 452, is denied, and
2. The Clerk will mail a copy of this Memorandum and Order to Defendant Emmanuel Chaplain at his last known address.

Dated this 7th day of April 2020.

BY THE COURT:

s/Laurie Smith Camp
Senior United States District Judge